

VIA ECF

August 21, 2023

Hon. Katharine H. Parker
United States Magistrate Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

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***Re: Spectrum Dynamics Medical Limited (Plaintiff) v. GE et al. (Defendants);
Case No.: 18-cv-11386 (VSB)***

Dear Judge Parker:

Pursuant to Your Honor's Order (ECF No. 737) regarding the parties' motions to seal (ECF Nos. 669, 687, 705), the parties respectfully submit this renewed motion to seal. Neither party opposes the other party's requests set forth below.

Defendants' Requests

Defendants' proposed revised redactions include direct quotations from Exhibit R, in accordance with the Court's Order (Doc. 737 at 7–8), and language that paraphrases information taken from Exhibit R. These paraphrases, like the direct quotes, concern information that the Court has upheld as “protected by the attorney-client privilege.” (Doc. 737 at 5; Doc. 738 at 6.) Therefore, Defendants submit that the proposed redactions are narrowly tailored to preserve the attorney-client privilege. These redactions appear as follows: Doc. 670 at 10, 12, 22–23; Doc. 688 at 11–13, 23, 25; and Doc. 706 at 5–6.

Defendants also request to file under seal Exhibits 6 and 11 to Defendants' Opposition brief. (See Docs. 689-6 and 689-11.) Exhibit 6 is similar to Exhibit Z to Spectrum's Opening brief (Doc. 670-1) in that it lists “invention ideas and comments regarding the strength of the ideas and plans for moving forward with the ideas.” (Doc. 737 at 5.) The Court previously held that such information “constitutes sensitive information” that warrants sealing. (*Id.*) Exhibit 11 is an excerpt from Defendants' responses to an interrogatory, which describes in detail Defendants' development of performance benchmarks for nuclear imaging systems, including those specific benchmarks and Defendants' underlying rationale for setting those benchmarks, none of which is publicly available. Where, as here, the document sought to be sealed concerns proprietary information related to product development, sealing is appropriate. See *Ferring B.V. v. Allergan, Inc.*, No. 12-cv-2650, 2017 U.S. Dist. LEXIS 150239, at *16 (S.D.N.Y. Sep. 7, 2017). Moreover, the Court has now decided the underlying motion and neither cited to, nor relied on Exhibits 6 and 11 in deciding the motion. This further supports sealing. See *Olson v. Major League Baseball*, 29 F.4th 59, 89-90 (2d Cir. 2022)



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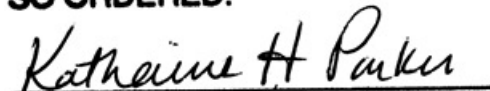
(presumption of public access “is weaker where the ‘documents play only a negligible role in the performance of Article III duties’”) (citations omitted).

Spectrum’s Request

Spectrum requests that GE Exhibit 8 (ECF No. 689-8) remain under seal. The exhibit is a list of document and information requests from GE during the due diligence. The exhibit includes responses from Spectrum, some of which identify sensitive agreements between Spectrum and third parties, including customers, distributors, sales representatives, software licensors, vendors, creditors, debtors, and affiliates. *See* GE Ex. 8 at 4-7. Spectrum considers the identity of these third parties to be competitively sensitive business information. Moreover, the Court has now decided the underlying motion and neither cited nor relied on GE Exhibit 8 in deciding the motion, which further supports sealing. *See Olson*, 29 F.4th at 89-90. Spectrum therefore respectfully requests that GE Exhibit 8 remain under seal.

The Court finds the parties' proposed redactions are sufficiently narrowly tailored to protect sensitive information in accordance with *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 124 (2d Cir. 2006), its progeny, and the Court's Order at ECF No. 737. Accordingly, the renewed motion to seal at ECF No. 746 is **granted**. By **Friday, November 3, 2023**, Spectrum shall publicly file its opening brief, initially filed under seal at ECF No. 670, with only the limited redactions outlined above and in the Order at ECF No. 737. GE has already publicly filed a version of its opposition brief and exhibits with the approved redactions.

SO ORDERED:


HON. KATHARINE H. PARKER
UNITED STATES MAGISTRATE JUDGE

10/30/2023



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Respectfully Submitted,

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cc: All counsel of record (via ECF)